

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MICHAEL WAYNE STEED,

Plaintiff,

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MARY SCOTT et al.

Defendants.

CASE NO. C12-6058 RBL-JRC

ORDER DENYING PLAINTIFF'S
MOTION TO COMPEL
DISCOVERY

The District Court has referred this 42 U.S.C. §1983 civil rights action to the undersigned Magistrate Judge. The Court's authority for the referral is 28 U.S.C. §§ 636(b)(1)(A) and (B) and Local Magistrate Judge Rules MJR 1, MJR 3, and MJR 4.

Plaintiff asks the Court to compel defendants to provide discovery (ECF No. 28). Defendants respond and argue that there has not been a Fed. R. Civ. P. 26(f) conference (ECF No. 29). Defendants argue that this conference must occur before discovery and that their motion to dismiss should be ruled on prior to any discovery taking place.

The Court denies the motion to compel because there is a pending Report and Recommendation to dismiss this action for failure to exhaust administrative remedies and, in the

1 alternative, because the defendants have raised the affirmative defense of qualified immunity.
2 “Until this threshold immunity question is resolved, discovery should not be allowed”. *Harlow v.*
3 *Fitzgerald*, 475 U.S. 800, 818 (1982).

4 The Court rejects defendants’ argument that an incarcerated pro se litigant must comply
5 with the discovery conference provisions of Fed. R. Civ. P. 26(f). Fed. R. Civ. P. 26(f) itself
6 specifically exempts pro se incarcerated inmates. *See*, Fed. R. Civ. P. 26(a)(1)(B)(iv) and Fed. R.
7 Civ. P. 26(f)(1).

8 Dated this 15th day of April, 2013.



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10 J. Richard Creatura
11 United States Magistrate Judge
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